

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0606R

RESOLUTION AUTHORIZING SUBLEASE AGREEMENTS WITH DEED,
NEMOJT AND AEOA FOR SUBLEASE OF SPACE IN THE DULUTH
ATHLETIC CLUB BUILDING FOR THE JOINT WORKFORCE CENTER.

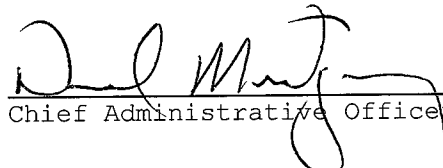
CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to enter into sublease agreements substantially in the form of that on file in the office of the city clerk as Public Document No. _____ with the state of Minnesota, department of administration, acting on behalf of the Minnesota department of employment and economic development, northeast Minnesota office of job training, and Arrowhead Economic Opportunity Agency for the subleasing of space in the Duluth Athletic Club building at 402 West First Street in Duluth, Minnesota for the joint workforce center, sublease payment to be deposited in Fund 268-031-6251-4622 (Workforce Development Fund, Grants Division, Office Support, Rent of Building).

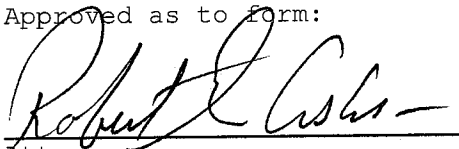
Approved:


Department Director


Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

WFD/ATTY REA:dma 11/04/2011

STATEMENT OF PURPOSE: This resolution authorizes the City to enter into subleases with State of Minnesota, Department of Administration, acting on behalf of the Minnesota Department of Employment and Economic Development, Northeast Minnesota Office of Job Training, and Arrowhead Economic Opportunity Agency for

the coordinated operation by all parties of their workforce center functions. This will replace space presently occupied in the Government Services Center which the County is requiring the parties to vacate.

Under these agreements, the City will sublease various portions of the building to each of the partners for their separate use but will also allow for all of the parties to jointly use portions of the property such as reception areas, interview rooms, rest room facilities and equipment areas and will also allow the parties to share use of and the cost of some equipment like printers and copiers. Each party will be responsible to pay for their separately controlled space and will also pay their proportionate share of the cost of jointly used facilities.

The agreement is for a 10-year period but does allow for adjustments in space utilization and rent as the needs of the parties change as well as providing the State with certain mandated "out" provisions.

SUBLEASE AGREEMENT

CITY OF DULUTH

DULUTH WORKFORCE CENTER

THIS AGREEMENT is entered into this ____ day of October, 2011, and is made by and between the CITY OF DULUTH, a municipal corporation created and existing under State of Minnesota, hereinafter referred to as "City", and _____ created and existing under the Laws of the State of Minnesota, hereinafter referred to as "Subtenant".

WHEREAS, City has leased the hereinafter-defined Leased Premises located in the Property and Building known as the Duluth Athletic Club Building located at 402 West First Street in Duluth, Minnesota from its owner, A & L Partnership LLP; and

WHEREAS, City, along with Subtenant and the hereinafter defined Agencies, are providers of various kinds of work assistance services in the Duluth-Superior area; and

WHEREAS, City, Subtenant and Agencies are desirous of creating a "Workforce Center" wherein City, Subtenant and Agencies can better offer their combined services to their clientele in more coordinated and comprehensive manner from a single location; and

WHEREAS, Subtenant is desirous of leasing a portion of the Leased Premises from City for the purpose of establishing and operating, in conjunction with City and Agencies, such a Workforce Center; and

WHEREAS, City is desirous of leasing such space to Subtenant under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

ARTICLE I

DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Additional Rent: shall mean Subtenant's allocated share of the costs of operating the Workforce Center on the Leased Premises as set forth in the approved CAP including but not limited to Subtenant's share of the rental of Shared Space, Cleaning Charges, Reception Area and Related Expenses, Resource Area and Related Expenses, Shared Fixed Expenses, Shared

Variable Expenses and Site Management and Administrative Support Expenses.

- B. Agencies: shall mean various other public and private entities in addition to City and Subtenant providing workforce services in the Workforce Center to persons in the Duluth Superior Area with which the City may enter into sublease agreements for use of the Subleased Premises.
- C. Base Rent: shall mean the monthly rate per square foot payable by Subtenant to City for the use of Dedicated Space as set forth in Paragraph A of Article III. below. Provided however, that Base Rent shall not include Subtenant's Additional Rent.
- D. Building: shall mean the building located on the Property.
- E. Cleaning Charges: shall mean the amount paid to City by Subtenant for the provision of Cleaning Services determined as set forth in the CAP.
- F. Cleaning Services: shall mean the performing routine cleaning of the Subleased Premises including but not limited to vacuuming, sweeping, mopping, washing, polishing of flooring surfaces, window washing, cleaning of wall and ceiling surfaces, picking up of trash and debris and emptying of waste receptacles in and over the entirety of the Subleased Premises.
- G. Cost Allocation Plan or CAP: shall mean the plan, developed and approved as provided for in Article II below, for the allocation the Additional Rent between City, Subtenant and Agencies.
- H. Dedicated Space: shall mean the portion of the Leased Premises subleased to Subtenant for its exclusive use as shown on Exhibit B attached hereto and made a part hereof
- I. DEED CAP Policies: shall mean the "Multi-Program Administrative Requirements" promulgated by the State of Minnesota Department of Employment and Economic Development attached hereto and made a part hereof as Exhibit C.
- J. Director: shall mean Director of the Department of Business and Community Development or the person designated to act on behalf of him/her with regard to this Agreement.
- K. Lease: shall mean the Lease Agreement between City and A & L Partnership LLP dated _____ pursuant to which the City Leased the Leased Premises from A & L Partnership for the Workforce Center.
- L. Leased Premises: shall mean those portions of the Building leased to City pursuant to the Lease for the operation of the Workforce Center and as the

same may be, from time to time, modified as provided for Lease, a portion of which is subleased to Subtenant.

- M. Property: shall mean that property located in St. Louis County, Minnesota legally described as:

Lot 65, West Superior Street, DULUTH PROPER First Division.

- N. Rent: shall mean the Base Rent and Additional Rent.
- O. Subleased Premises: shall mean the Dedicated Space and the rights to use the common areas as described in Paragraph B. of Article II below and as depicted on Exhibit A attached hereto and made a part hereof.
- O. Subtenants: shall mean subtenants of Sublessee to which Sublessee subleases the Subleased Premises under such terms and conditions as Sublessee shall deem appropriate.
- P. Tenant Committee: shall mean a committee created and operating as described in Paragraph A of Article II below.
- Q. Tenant Improvements: shall mean floor coverings, wall surface treatments within the Subleased Premises, partitions, doors, light fixtures and wiring within the Subleased Premises, other electrical wiring, telephone wiring and cable systems to serve needs of the Sublessee and Subtenants, ceilings within the Subleased Premises and any other improvements within the Subleased Premises to meet the needs of Sublessee as a tenant and any Subtenants of Sublessee.
- R. Term: shall mean the term as stated in Article V. below.
- S. Usable Area (the "UA"): shall mean that portion of each floor of Building included in the Leased Premise computed by measuring from the finished surface of the leased side of any corridor and other permanent walls, and the dominant portion and/or a major vertical penetration and the center of partitions that separate the Leased Premises from adjoining space; no deductions shall be made for columns and projections necessary to the Building.
- T. Workforce Center: shall mean a joint enterprise pursuant to which City, Subtenant and Agencies jointly offer various forms of workforce assistance to residents of the Duluth-Superior Area in a coordinated manner at a single location.

ARTICLE II

TENANT COMMITTEE AND CAP

- A. Tenant Committee

Subtenant hereby agrees that it will appoint a representative to and participate in the Tenant Committee created City to assist City in administering and operating the Workforce Center and the Leased Premises and to participate in the development of the CAP. City, Subtenant and Agencies shall each have a representative on the Tenant Committee and any representative may bring a matter to the Tenant Committee related to the administration and operation of the Workforce Center in the Leased Premises and the CAP. The purpose of the Tenant Committee is to seek to develop consensus on all such issues, but, except as otherwise required by the DEED CAP Policies or by this Sublease, the City shall have discretion to administer and operate the Leased Premises in the manner it deems appropriate.

B. CAP

1. Initial CAP

Upon the signing of this Sublease the members of the Tenant Committee shall join in developing and approving the CAP for the Leased Premises. The provisions of the CAP shall comply with the requirements of the DEED CAP Policy. Subtenant agrees to sign the CAP as required by the DEED CAP Policy.

2. CAP Review

Subsequent to the approval of the Initial CAP as provided for in Subparagraph 1 above, on or before March 31st, June 30th, September 30th and December 31st of each year of the Term of this Agreement, Subtenant agrees to join with the other members of the Tenant Committee to review the then-most-current CAP and the CAP-related data for the most recent operating year and to make any adjustments or revisions to the CAP to keep it in compliance with the DEED CAP Policy.

3. LAS

It is agrees that the City shall be empowered to provide Local Administrative Support Services under the CAP as described in the DEED CAP Policy.

4. CAP Disputes

Disputes regarding the implementation of the DEED CAP Policy and the CAP shall be resolved as provided for in the DEED CAP Policy.

ARTICLE III
SUBLEASED PREMISES

A. Lease of Dedicated Space

Subject to the terms and conditions hereinafter set forth, City hereby grants and leases to Subtenant the Dedicated Premises, for the exclusive use of Subtenant. During the Term and any extensions, Subtenant shall have exclusive use of the Dedicated Space for the purposes herein set forth, subject to the terms and conditions of this Agreement and, unless authorized by this Agreement, City will take no action which will prevent Subtenant from the quiet enjoyment of the Dedicated Space during saidthe Term.

B. Common Areas

In addition to Subtenant's exclusive rights to the Dedicated Space, Subtenant shall enjoy, in common with City and other Agencies, if any, full and complete use of the common areas in the Building, including but not limited to entryways, hallways, courts, stairways, elevators, escalators, if any, bathroom facilities and any other areas of the Building of a type or character commonly available as common area to tenants of commercial buildings. In addition, Subtenant shall have the right to use, in common with City and other Agencies, Shared Spaces, Reception Areas and Resource Areas, provided that such spaces are not otherwise contained in City's or another Agency's dedicated space. City shall have the right, from time to time, to make, enforce and modify reasonable rules for the use of all such common areas by Subtenant and Agencies, provided that such rules do not unreasonably interfere with the reasonable use of or occupancy of the Subleased Premises by Subtenant.

C. Changes to the Subleased Premises

During the Term of the Agreement, upon Sixty (60) days prior notice to City as provided for in Article XXI. below, Subtenant shall have the right to delete from the Subleased Premises any portion thereof which the Subtenant deems to be superfluous to its needs. Subtenant agrees that the portion of the Subleased Premises so deleted will, to the extent reasonably practical, constitute a space which is reasonably rentable to a third party tenant and that such deleted portion shall have direct access to one or more of the common areas of the Building in a manner which will provide reasonable ingress and egress to and from the deleted portion in a commercially reasonable manner and reasonable access to restroom facilities that will serve male and female employees. Both the deleted portion of the Subleased Premises and the remainder of the Subleased Premises shall be provided with code-compliant

egress from the Building. Subtenant further agrees that upon the vacation of the such deleted portion of the Subleased Premises, Subtenant and its Subtenants shall have removed therefrom all personal property of Subtenant which has not become part of the realty and will have removed all trash and any other unwanted materials from the deleted portion of the Subleased Premises. Upon such deletion of any such portion of the Subleased Premises, Subtenant shall provide to City a revised drawing of the floorplan of the floor or floors of Building upon which the deleted portion of the Subleased Premises is located in a form substantially similar to Exhibit A, which shall thereafter be substituted in Exhibit A for the floorplans which have been superceded and the rights and responsibilities of the parties with regard to the Subleased Premises shall exclude such deleted portion except as provided for in Paragraph D below. In addition, Subtenant shall promptly reimburse City for any costs incurred by City or any other Agency for any costs to City or such Agency arising out of Subtenant's deletion of said portion of the Subleased Premises.

D. Re-lease of Deleted Subleased Premises

In the event that the Subtenant shall have previously deleted any portion of the Subleased Premises as provided for in Paragraph C above and shall later determine that it is to Subtenant's benefit to add said portion or any part thereof back into the Subleased Premises under the terms of this Agreement and if said portion of the Subleased Premises are not then leased or committed to a third party by City or the City's Lessor, City agrees that on a date agreed to in writing between City and Sublessor, said portion shall effectively be added back into the definition of Subleased Premises, Subtenant shall provide to City a revised drawing of the floorplan of the floor or floors of Building upon which the added portion of the Subleased Premises is located in a form substantially similar to Exhibit A, which shall thereafter be substituted in Exhibit A for the floorplans which have been superceded and thereafter, subject to later deletion pursuant to Paragraph C above, said portion shall be covered by the terms and conditions of this Agreement. In addition, Subtenant shall promptly reimburse City for any costs incurred by City or any other Agency for any costs to City or such Agency arising out of Subtenant's re-leasing of said portion of the Subleased Premises.

ARTICLE IV

LEASE PAYMENTS

A. Base Rent

During the Term of the lease, it is agreed that Subtenant will pay City Base Rent for the use of the Subleased Premises on a monthly basis, which rent shall equal One/Twelfth (1/12) on the following rental rate applicable to that month multiplied by the number of square feet of the UA to be actually occupied by Subtenant during that month. Said rental payments shall be payable on the first day of the month to which they are attributable.

1.	From Effective date to 7/31/12	\$11.00/square foot/year
2.	From 8/01/12-7/31/13	\$12.90/square foot/year
3.	From 8/1/13-7/31/14	\$12.90/square foot/year
4.	From 8/1/14-7/31/15	\$12.90/square foot/year
5.	From 8/1/15-7/31/16	\$13.15/square foot/year
6.	From 8/1/16-7/31/17	\$13.40/square foot/year
7.	From 8/1/17-7/31/18	\$14.05/square foot/year
8.	From 8/1/18-7/31/19	\$14.05/square foot/year
9.	From 8/1/19-7/31/20	\$14.05/square foot/year
10.	From 8/1/20-7/31/21	\$14.35/square foot/year
11.	From 8/1/21-7/31/22	\$14.70/square foot/year

B. Additional Rent

In addition to the Base Rent provided for above, Subtenant agrees to pay to City all Additional Rent for the determined as set forth in the CAP.

C. Rent Due Date

All Rent due and owing to City shall be paid to City by Subtenant on or before the first day of the month to which such rent pertains.

ARTICLE V

TERM

The Term of this Agreement shall be deemed to have commenced as of the date upon which the Subtenant Clerk attests to its execution as shown on the signature page of this Agreement and shall run through July 31, 2022 unless extended or sooner terminated as hereinafter provided for.

ARTICLE VI

OPERATING COVENANTS

City covenants and agrees that in its operations and use of the Building it will:

A. Maintenance

At all times, except as set forth in this Paragraph, cause the Building to be

operated and maintained in a neat, orderly condition; to maintain and preserve and keep in good repair, working order and condition said Building; and to perform all needful and proper repairs, renewals and replacements necessary to be made thereto, including the provision of Cleaning Services to the Subleased Premises. The obligation to maintain the Building shall include but not be limited to maintenance of all foundations, external walls, doors, windows, utility openings all roofing systems and all mechanical, electrical, HVAC, electronic keycard access systems and other Building Systems. City shall also be responsible for maintenance of the Property outside of the Building, including snow removal and landscape maintenance and all other exterior maintenance to said Property.

B. Utilities

Pay any and all charges for utilities furnished to the Building including but not limited to hook-up charges and assessments related to all utilities, including but not limited to electrical service, fibre optic cable, steam, water, sewer and gas. Subtenant shall be responsible for paying for all costs associated with the provision of any other utilities not specified herein to the Subleased Premises and, if desired, the cost of cable TV service.

C. Heating and Cooling

The temperature in the Subleased Premises shall be maintained between 68 Degrees Fahrenheit and 78 Degrees Fahrenheit at all times.

D. Obey All Laws

Conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the United States and the several states thereof and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Property.

E. Assessment Fees and Charges

To pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Building or the property upon which it is located, or any part there and to pay all fees, charges and rentals for utilities, service or extensions for the Building and all other charges lawfully made by any governmental body for public improvements.

G. Refuse and Garbage

City shall be responsible to collect all trash, refuse and garbage of any kind on the Subleased Premises or on the Property and to dispose of the same at

its sole cost. Subtenant shall be responsible for collecting and removing all trash and refuse from the Dedicated Space and for having it deposited to a common collection point on each floor of the Subleased Premises at its cost. Thereafter City shall have all responsibility for the disposal of refuse.

ARTICLE VII TENANT IMPROVEMENTS

Prior to the commencement of any Tenant Improvements on the Subleased Premises, Subtenant shall have provided to City the following information and documentation with regard to any such Work:

A. Initial Improvements

City and Subtenant agree that, prior to December 1, 2011, City shall have caused to be completed the Tenant Improvements shown on Exhibit B attached hereto and made a part hereof at no cost to Subtenant. Such Tenant Improvements shall be deemed to be part of the realty.

B. Subsequent Tenant Improvements

Subtenant shall have the right to make additional Tenant Improvements to the Subleased Premises, provided that if such Tenant Improvements shall have a cost for construction and materials in excess of Ten Thousand Dollars (\$10,000), such Tenant Improvements shall be done in accordance with the process set forth in this Subparagraph.

1. Construction Plans

In the event that Subtenant, either for itself or for any Subtenant, wishes to make any Tenant Improvements to the Subleased Premises, Subtenant shall cause to have prepared and submitted to City plans and specifications for such Tenant Improvements in such specific detail as will clearly show what Tenant Improvements are proposed to be made and what materials and equipment are proposed to be included in such Tenant Improvements. All such plans, specifications and elevations shall be in conformity with this Agreement and with all applicable laws, ordinances, rules, regulations and requirements of the Subtenant, State and United States of America. Said plans and specifications may be disapproved by the City but only if said plans and specifications do not meet applicable codes or if said Tenant Improvements will have a negative or deleterious physical effect on the Subleased Premises or on the

Building as a whole. If City disapproves said plans and specifications pursuant to the authority contained in this Paragraph, Subtenant may either submit modified plans and specifications which meet City's reasonable objections thereto or may abandon making the proposed Tenant Improvements.

2. Build-out of Tenant Improvements

At any time during the Term of the Agreement, Subtenant may present City with plans for Tenant Improvements to the Subleased Premises and request that City purchase and install in, or build out such improvements in, the Lease Premises. Within twenty (20) days of such request, City shall furnish Subtenant with a detailed estimate of the cost of making such Tenant Improvements to the Subleased Premises. If Subtenant approves City's estimate of the costs thereof, Subtenant shall notify City of its approval and thereafter City shall proceed to promptly make said Tenant Improvements to the Subleased Premises. Subtenant shall be responsible to reimburse City for the cost of such tenant Improvements up to the amount of the cost estimate provided by City. In the event that Subtenant determines that the cost of the Tenant Improvements proposed by City exceeds the reasonable value thereof, Subtenant may secure, or have secured on its behalf, proposals to make said Tenant Improvements from third parties. If any such proposal is less in amount than that proposed by City, City shall be given notice thereof and the opportunity to reduce its estimated cost of making said Tenant Improvements. If said third-party proposal is less than City's revised estimate, Subtenant shall be entitled to contract with said third party for the making of said Tenant Improvements.

3. Construction Contracts

If Subtenant contracts with a third party to construct the Tenant Improvements as authorized by Paragraph C above, Subtenant shall provide to City a copy of an executed contract or contracts between City and the contractor or contractors selected to complete the Tenant Improvements in accordance with approved plans and specifications, certified by Subtenant to be true and correct copies thereof.

ARTICLE VIII

PREMISES AND MAINTENANCE

A. Premises

City agrees to maintain the Building including the Subleased Premises. If Subtenant requests City provide Cleaning Services, in a clean, neat and orderly condition and in compliance with all codes for such facilities. City shall maintain all elements of the Building, including the Subleased Premises, in good, functional condition including heating systems, electrical systems, plumbing systems, drains, sewers, doors, and windows and shall repair or replace any such building systems or elements which become worn, damaged or broken.

B. Inspection of Subleased Premises

Upon reasonable request therefore, Subtenant shall allow representatives of City to inspect the Subleased Premises.

C. Non-Discrimination

City agrees to not engage in discriminatory practices in the completion in the operation or management of the Building with regard to either employment or service to the public, including specifically not discriminating on the grounds of race, creed, color, national origin, sex, age, handicap or receipt of public assistance, and City shall, with respect to all activities on the Property, fully comply with all of the provisions of Federal, State and local law prohibiting discrimination against any protected class of persons.

ARTICLE IX

SURRENDER OF POSSESSION

Upon the expiration or other termination of this Agreement, Subtenant's rights to use the Subleased Premises herein granted shall cease and Subtenant shall, upon expiration or termination, promptly and in good condition surrender the same to City. In the event that Subtenant has in any way changed, altered or modified the Subleased Premises demised herein, other than those improvements permitted as herein provided for, Subtenant covenants to return the same to the condition they were in at the time of the signing of this Agreement or, in the alternative, to pay City for the cost of returning them to said condition unless waived by the City in writing. Upon termination, any Leasehold Improvements which have become part of the realty shall become the property of City, and the same, together with the Subleased Premises, shall be immediately returned to the control of City. Any Leasehold Improvements not part of the realty shall be removed therefrom within fifteen (15) days after the termination of this Agreement or the same shall be deemed to have been abandoned to City and the right of Subtenant to possession thereof shall cease.

ARTICLE X

PROVISIONS REGARDING LIENS, ASSIGNMENTS AND SUBLEASES

A. Provision Against Liens

Except for encumbrances permitted pursuant to Paragraph B below, Subtenant shall not create or permit any mortgage, encumbrance or lien or allow any mechanics' or materialmen's liens to be filed or established or to remain against the Subleased Premises or any part thereof, provided that if Subtenant shall first notify City of its intention to do so, Subtenant may, in good faith, contest any such mechanics' or other liens filed or established as long as City's interest or rights in this Agreement are subject to foreclosure by reason of such context.

B. Provision Against Assignments, Transfers or Change in Identity of Owner

Subtenant represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, and has not or will not otherwise transfer in any other way all or any portion of the Subleased Premises or of its rights under this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Subtenant will not make or create or suffer to be made any such transfer of Subtenant's rights hereunder without the prior approval of Director.

ARTICLE XI

INDEMNIFICATION

A. By Subtenant

Subtenant will to the fullest extent permitted by law but subject to the limitations contained in any applicable Minnesota Statute, protect, indemnify and save City and its officers, agents, servants, employees and any person who controls Subtenant within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgements of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Subleased Premises, or growing out of or in connection with the use or non-use, condition or occupancy of the Subleased Premises or any part thereof. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage,

compensation or benefits payable by or for the Subtenant, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

2. Any violation by Subtenant of any provision of this Agreement.
3. Any violation of any law, ordinance, court order or regulation affecting the Subleased Premises or the occupancy or use thereof.

B. By City

City will to the fullest extent permitted by law but subject to the provisions of Minnesota Statutes Chapter 466, protect, indemnify and save Subtenant and its officers, agents, servants, employees and any person who controls Subtenant within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgements of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Building or growing out of or in connection with the use or non-use, condition or occupancy of the Building or any part thereof and also, without limitation, any and all acts or operations related to the construction or installation of the Building. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the City, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by City of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Building which shall have existed at the commencement of the Term of this Agreement or shall have been approved by the City.
4. Any violation of any law, ordinance, court order or regulation affecting the Building or the ownership, occupancy or use thereof.

C. Indemnification Procedures

Promptly after receipt by either party of notice of the commencement of any action with respect to which the other party is required to indemnify the said party under this Article, the indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the

employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the Subtenant with respect to which indemnity may be sought against the City, Subtenant shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the City.

ARTICLE XII INSURANCE

Subtenant shall procure and continuously maintain insurance covering all risks of injury to or death of persons or damage to Building and Property arising in any way out of or as a result of City's occupancy of or use of the Building or Property, carried in the names of the Subtenant and City, as their respective interests may appear, as follows:

A. Insurance During Construction

Subtenant, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. Property Insurance

Subtenant shall provide "All Risk" builders' risk insurance under a completed value form on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and 00/100ths (\$50,000.00) Dollars per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Property and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the names of City, Subtenant, any subtenant and contractor, as their interest may appear. Contractor, all subcontractors, and suppliers and Subtenant shall waive all rights against City for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance

Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars aggregate per occurrence for personal injury, bodily injury and death, and limits of One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars for property damage liability. If per person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars per person and be for the same coverages. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors' public liability--premises and operations;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions; and
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers liability coverage shall be maintained in limits of One Hundred Thousand and 00/100ths (\$100,000.00) Dollars per employee.

B. Permanent Insurance

1. Property Insurance

During the entire Term of the Agreement, the Building and Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Subtenant hereby waives any and all claims or causes of action against City for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an

interest in the insurance proceeds payable in the event of such loss. In time of war in which the United States of America is a belligerent, the Subtenant will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the project and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable.

2. Liability Insurance

The Subtenant shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars aggregate per occurrence for personal bodily injury and death, and limits of One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars for property damage liability. If person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars per person and be for the same coverages. The Subtenant shall be named as an additional insured therein. Insurance shall cover:

- a. Public liability, including premises and operations coverage.
- b. Independent contractors--protective contingent liability.
- c. Personal injury.
- d. Owned, non-owned and hired vehicles.
- e. Contractual liability covering the indemnity obligations set forth herein.
- f. Dram Shop Insurance, if applicable.
- g. Property of Others.

3. Workers' Compensation

Workers' Compensation Coverage in statutory amounts with "all states" endorsement. Employees liability insurance shall be carried in limits of One Hundred Thousand and No/100 (\$100,000.00) Dollars per employee.

C. Requirements for All Insurance

All insurance required in this Article IX shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

D. Policies

Subtenant shall be required to supply to the City written copies of all policies required under this Agreement. In addition each insurer providing such policies shall be required to provide evidence satisfactory to the CAO that such policies will require the insurer to give the Subtenant thirty (30) days' written notice prior to cancellation or modification of said insurance. In the event that an "accord" form of certification is used, the words, "endeavor to" shall be stricken from the notification provisions thereof.

ARTICLE XIII

DEFAULTS AND REMEDIES THEREFORE

A. City Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by City under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable as otherwise set forth in this Agreement.

- a. City shall fail to observe or perform any of the other terms, conditions, covenants or agreements required to be observed or performed by it or any successors or assigns of City pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after Subtenant has, pursuant to the provisions of this Agreement, given written notice to City of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.
- b. City shall permit valid liens, not cured or contested within thirty (30) days, to be placed on the Building.
- c. City makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to City or its business; or City files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any

present or future bankruptcy or insolvency statute, law or regulation; or City files an answer admitting to or not contesting to the material allegations of a petition filed against in such proceeding or fails to have dismissed or vacated within thirty (30) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of City's properties or fails to have dismissed or vacated within thirty (30) days after the appointment without the consent or acquiescence of City of any trustee, receiver or liquidator of any material part of City's properties.

2. General Remedies

Except as otherwise set forth in this Agreement, Subtenant shall have the following remedies in the event of a default by City:

- a. Terminate this Agreement, subject to rights conferred on City by applicable State Statute.
- b. Seek and be entitled to monetary damages, including consequential damages from City for any damages, including consequential damages incurred by Subtenant as a result of City's default.
- c. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent City's violation of the terms and conditions of this Agreement or to compel City's performance of its obligations hereunder.
- d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to Subtenant.

B. Subtenant Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by Subtenant under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable as otherwise set forth in this Agreement.

- a. Subtenant shall fail to pay any Rent or other payment due to City under Article III above within ten (10) days of the date said

payment is due.

- b. Subtenant shall fail to observe or perform any of the other terms, conditions, covenants or agreements required to be observed or performed by it or any successors or assigns of Subtenant pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after City has, pursuant to the provisions of this Agreement, given written notice to Subtenant of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.
- c. Subtenant shall permit valid liens, not cured or contested within thirty (30) days, to be placed on the Subleased Premises with the exception of assignments approved pursuant to the terms of this Agreement.

2. General Remedies

Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by Subtenant:

- a. Terminate this Agreement and, at its discretion, retake the Subleased Premises from Subtenant, subject to rights conferred on Subtenant by applicable State Statute.
- b. Seek and be entitled to monetary damages, including consequential damages from Subtenant for any damages incurred by City as a result of Subtenant's default.
- c. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Subtenant's violation of the terms and conditions of this Agreement or to compel Subtenant's performance of its obligations hereunder.
- d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

3. Non-default—Minnesota Statute 16B.24Subd. 6.

Nothing to the contrary of the foregoing withstanding, in the event that Subtenant is authorized to terminate this Sublease

pursuant to the provisions of Minnesota Statute Section 16B.24 Subd. 6 and so terminates this Sublease, such termination shall not be deemed to be an event of default hereunder provided that the provisions of Paragraph 3 of Article II above shall apply to such termination.

4. Non-default–Non-appropriation

Nothing to the contrary of the foregoing withstanding, in the event that Subtenant is dependent on the appropriation of funds by governmental legislative body in order to pay Rent as provided for in this Agreement and such body shall fail to so appropriate funds in sufficient amounts to continue to pay such rent, despite Subtenant's best efforts to secure such funding, Subtenant may terminates this Sublease and such termination shall not be deemed to be an event of default hereunder provided that the provisions of Paragraph 3 of Article II above shall apply to such termination.

C. Non-Waiver

The waiver by the non-defaulting party of any default on the part of defaulting party or the failure of non-defaulting party to declare default on the part of defaulting party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of defaulting party of the same or of any other obligation of defaulting party hereunder. And, to be effective, any waiver of any default by a defaulting party hereunder shall be in writing by non-defaulting party.

D. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

E. Attorneys' Fees

In the event that either party is in default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorney's fees and

costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XIV FORCE MAJEURE

Under the terms of this Agreement, neither the Subtenant nor City shall be considered in default or in breach of any of the terms with respect to the performance of their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of contractors or subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE XV EMINENT DOMAIN

In the event that the Subleased Premises or any portion thereof shall be taken by eminent domain, or that the value of Subtenant's leasehold interest is measurably diminished at a result of such an exercise of the exercise of eminent domain, at any time during the Term of this Agreement, Subtenant shall be entitled to damages equal to the damages suffered by it as a tenant under Minnesota Statutes for the remaining Term of this Agreement.

ARTICLE XVI DESTRUCTION OF PREMISES

In the event of partial or total damage or destruction of the Subleased Premises during the Term of this Agreement, the following shall apply:

A. Continued Occupancy

In the event that the Subleased Premises are partially damaged or destroyed but Subtenant determines that it is practical to continue to occupy and use the Subleased Premises for carrying on the work of the Workforce Center, City shall proceed to repair or reconstruct the Subleased Premises to substantially the condition they were in prior to the damage thereto and Subtenant may continue to occupy and use the Subleased Premises, provided that it shall be entitled to a reduction of Rent payable to City representing any reduction in the Subleased Premises available to Subtenant

for its use and for the reduction in utility of those portions of the Subleased Premises occupied and used by Subtenant. City shall cause such repairs and reconstruction to be completed as expeditiously as possible; in this regard the parties agree to cooperate to coordinate such repair and reconstruction work with Subtenant's operation of its Workforce Center operations.

B. Occupancy Interrupted

To the extent that Subtenant shall determine that the extent of damage or destruction of the Subleased Premises is such that it is not practical for Subtenant to continue to operate the Workforce Center therefrom, Subtenant may cease operations of its Workforce Center on the Subleased Premises and shall not be obligated to pay Rent to City during such period when it is not occupying the Subleased Premises. City shall have the option of repairing the Subleased Premises or of terminating this Agreement. If City chooses not to repair or reconstruction the Subleased Premises or fails to restore the Subleased Premises to substantially the condition they were in prior to the event causing the damage or destruction thereto within Ninety (90) days of said incident, Subtenant shall have the option of terminating its lease of the Subleased Premises hereunder.

ARTICLE XVII

SIGNAGE

Subtenant shall have the rights to affix professionally fabricated signs to the exterior of the Building adjacent to every public access to the Building advertizing the Subtenant and the names of any Subtenants of Subtenant for the purpose of identifying the services provided by Subtenant and its Subtenants to the public. Such signs shall be deemed to the property of Subtenant and its Subtenants.

ARTICLE XVIII

REPRESENTATIONS BY SUBTENANT

Subtenant represents and warrants that as of the date hereof:

- A. It is a lawfully constituted_____ under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are no actions, suits or proceedings pending, or to the knowledge of Subtenant, threatened against Subtenant or any property of Subtenant in any court or before any Federal, State, municipal or governmental agency which,

if decided adversely to Subtenant, would have a material adverse effect upon Subtenant or any business or property of Subtenant and Subtenant is not in default with respect to any order of any court or government agency.

- C. Subtenant has investigated and has no knowledge that a Subtenant board member or other member, official, or employee of Subtenant is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- D. Subtenant shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

ARTICLE XIX

CITY'S REPRESENTATIONS AND WARRANTIES

City represents and warrants that as of the date hereof:

- A. It is a lawfully constituted municipal corporation under the laws of the State of Minnesota, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- B. It is fully competent to lease the Subleased Premises and to construct, equip and operate the Building thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, including Davis-Bacon and local versions thereof or similar laws at its own expense.
- C. There are no actions, suits or proceedings pending or, to the knowledge of City, threatened against City or any property of City in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to City, could have a material adverse effect upon City or the Property and Building, and that City is not in default of any order of any court or governmental agency.
- D. City has investigated and has no knowledge that any officer, director, agent or employee of City is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- E. City shall do such things as are necessary to cause any information,

document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects. If necessary, City agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.

ARTICLE XX

RUNS WITH THE LAND

This Agreement shall be deemed to run with the land and shall enure to the benefit of the parties hereto and to their successors and assigns.

ARTICLE XXI

NOTICES

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of City:

City of Duluth
Room 402 City Hall
411 West First Street
Duluth, MN 55802

Attn: Director of Business & Community
Development

In the case of Subtenant:

Copy to:

ARTICLE XXII

APPLICABLE LAW

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State.

2011, by Don Ness and Jeffrey J. Cox, the Mayor and Subtenant Clerk of the Subtenant of Duluth, a municipal corporation, on behalf of the Subtenant.

Notary Public

This Lease Drafted by:
Robert E. Asleson
Room 410 City Hall
Duluth, MN 55802
(218) 730-5490

